

UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference 105,901 (LG)
Technology Center 1600

LIEPING CHEN,

Application 12/347,492,
Junior Party,

v.

**GORDON FREEMAN, VASSILIKI BOUSSIOTIS,
TATYANA CHERNOVA, and NELLY MALENKOVICH**

Patent 7,038,013,
Senior Party.

DECLARATION

Before: LORA M. GREEN, *Administrative Patent Judge*.

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Part A

Declaration of Interference

Consistent with discussion during a conference call between counsel for Party Chen and Party Freeman on 06 June 2012 in related interferences 105,884; 105,885; and 105,887; an interference is declared between the above-identified parties. 35 U.S.C. § 135(a); 37 C.F.R. § 41.203(b).

Details for the application, patent, count and claims designated as corresponding or as not corresponding to the count appear in Parts E and F of this DECLARATION.

A claim of an involved application or involved patent which is *not* designated as corresponding to *any* count is not "involved" in the interference within the meaning of 35 U.S.C. § 135(b).

For a United States patent or published application listed in this Declaration, see

<http://patft.uspto.gov/>

See also

<http://portal.uspto.gov/external/portal/pair>

for prosecution histories available to the public.

Part B

Judge Managing the Interference

Administrative Patent Judge Lora M. Green has been designated to manage the interference. 37 C.F.R. § 41.104(a).

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Part C

Standing Order

A Trial Division STANDING ORDER (8 March 2011) (Paper 2) accompanies this DECLARATION.

The STANDING ORDER applies to this interference, including the provisions related to Electronic Filing. See ¶ 105, pages 15-17

Part D

Initial Conference Call and Motions Lists

Conference Call

In the conference call on 06 June 2012, counsel for Chen and Freeman indicated that the motions would be essentially the same as those filed in the related interferences. Thus, accompanying this Declaration is an order authorizing motions. If the parties feel that additional discussions as to the motions lists are necessary, they can contact the Board to set up a conference call.

Time periods for taking action during the motions phase are set out in an order accompanying this Declaration.

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Part E

Identification of the Parties
Assignment of Exhibit Numbers
Initiating Settlement Discussions

Junior Party

Inventors: LIEPING CHEN

Application: Application 12/347,492
filed 31 December 2008

Pat. Publication US 2009/0274666

Title: B7-H1, A Novel Immunoregulatory Molecule

Real party in interest: Mayo Foundation for Medical Education and
Research

Senior Party

Inventors: GORDON FREEMAN,
VASSILIKI BOUSSIOTIS,
TATYANA CHERNOVA, and
NELLY MALENKOVICH

Patent: U.S. Patent 7,038,013
issued 02 May 2006
based on application 10/002,775
filed 05 December 2001

Pat. Publication US 2002/0102651

Title: B7-4 Polypeptides and uses thereof

Real party in interest: Dana-Farber Cancer Institute, Inc.

1 Assignment of Exhibit Numbers

2 Senior party: Exhibit Numbers 1001 through 1999.

3 Junior party: Exhibit Numbers 2001-2999.

4 Board: Exhibit Numbers 3001-3999.

5
6 Initiating Settlement Discussions

7 STANDING ORDER ¶ 126 (Paper 2, page 37)

8 The senior party is responsible for initiating settlement discussions
9 required by the STANDING ORDER.

10 **Part F**

11 **Counts and Claims of the Parties**

12 *Count 1*

13 An isolated polypeptide comprising the amino acids having the sequence set
14 forth in Chen SEQ ID NO:1 or Freeman SEQ ID NO: 4.

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16 The claims of the parties are:

17 Chen: 1, 2, 4, 6, 11-13, 36-38, 40-44, 49-59, 62-71, 77,
18 78, and 80-124.

19 Freeman: 1-14

20 The claims that correspond to Count 1 are:

21 Chen: 6, 38, and 107-114

22 Freeman: 1-14.

23 The claims that do not correspond to Count 1 are:

24 Chen: 1, 2, 4, 11-13, 36, 37, 40-44, 49-59, 62-71, 77, 78,
25 80-106, and 115-124

26 Freeman: None

1 With respect to Count 1, the parties are accorded an earlier
2 constructive reduction to practice (i.e., benefit for the purpose of priority) of
3 the following applications:

4 Chen: Application 12/347,492, filed 31 December 2008;
5 Application 09/649,108, filed 28 August 2000;
6 Application 09/451,291, filed 30 November, 1999.

7 Freeman: Application 10/002,775, filed 02 November 2001;
8 Application 09/644,934, filed 23 August 2000;
9 Provisional application 60/150,390,
10 filed 23 August 1999.

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Part G

Heading to be Used on Papers

The following heading shall be used on all papers filed in this
interference [STANDING ORDER ¶ 106.1.1 (Paper 2, page 17)].

Filed by: [name of party]	Paper <i>leave blank</i>
[Name of attorney]	Date filed: [enter date emailed to Board]
[Email address of attorney]	
[Telephone number of attorney]	

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Title of Paper, e.g., CHEN SUBSTANTIVE MOTION 1

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Part H

Order Form for Requesting File Copies

When requesting file copies, a party shall use STANDING ORDER Form 4 (page 68).

Use of form 4 will expedite processing of any request.

A party should attach to any request for file copies a photocopy of Part E of this DECLARATION with a hand-drawn circle around the patent and application files for which a copy of a file wrapper is requested.

The parties are advised that a single order for file copies may be filled by the Office of Public Records in more than one package. STANDING ORDER ¶ 109.2 (Paper 2, pages 22-24).

Part I

Required Paragraph of Affidavits and Declarations

The Board has experienced cases in which a witness has belatedly advanced reasons why the witness would be unable to appear for cross examination at a reasonable time and place in the United States.

Consequently, to prevent surprise and hardship to the party relying on the testimony of a witness, the following paragraph must be included on the signature page of all affidavits (including declarations) filed in this case. STANDING ORDER ¶ 157.2 (Paper 2, page 49).

In signing this [affidavit [declaration]], I understand that the [affidavit [declaration]] will be filed as evidence in a contested case before the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office. I acknowledge that I may be subject to cross examination in the case and that

1 cross examination will take place within the United States. If
2 cross examination is required of me, I will appear for cross
3 examination within the United States during the time allotted
4 for cross examination.

cc (via electronic mail):

Attorney for Chen:

Gerald M. Murphy, Jr., Esq.
Craig A. McRobbie, Esq.
MaryAnne Armstrong, Ph.D., Esq.
Leonard R. Svensson, Esq.
Birch, Stewart, Kolasch & Birch, LLP
Email: gmm@bskb.com
Email: cam@bskb.com
Email: maa@bskb.com
Email: lrs@bskb.com
Email: mailroom@bskb.com

Attorney for Freeman:

DeAnn F. Smith, Esq.
Philip S. Choi, Esq.
Foley Hoag, LLP
Email: patent@foleyhoag.com